

## **CHAPTER 12.12**

### **Improvement Districts**

#### **12.12.010 Creation of districts – City Council authority.**

The City Council, on its own initiative, shall have the power and authority to create local improvement districts for making improvements of a local or special nature, including constructing, widening and surfacing streets and alleys; constructing or reconstructing sidewalks, curbs and gutters; extending and constructing sanitation and storm sewers and water lines; setting apart portions of streets and alley rights of way for use as pedestrian malls and constructing improvements on or under such pedestrian malls; creating parks; constructing off street parking facilities; and landscaping nontraveled portions of streets and alley rights of way. The above reference to specific types of local improvements shall not limit the authority of the City Council to create improvement districts for other types of improvements which confer special benefits on property within the local improvement district in addition to the general benefits conferred to the City at large. (Ord. 266-73)

#### **12.12.020 Creation of districts – property owner petitions considered.**

The City Council shall not be required to create local improvements districts upon petition of property owners; but, in exercising its judgment on the question of creating local improvement districts, the City Council shall consider the desires of real property owners, as expressed by petition, along with other pertinent factors. (Ord. 266-73)

#### **12.12.030 Chapter provisions not exclusive.**

Nothing in this chapter shall preclude the construction of local improvements or purchase of existing facilities in accordance with applicable provisions of state law or pursuant to private contract. (Ord. 266-73)

#### **12.12.040 Creation of districts – ordinance required – public hearing.**

If the City Council desires to provide for a local improvement, it shall adopt an ordinance creating an improvement district for that purpose. Immediately following the first reading of the proposed ordinance, the City Council shall schedule a public hearing to take place no sooner than twelve (12) days from the first reading. The creating ordinance shall set forth, insofar as possible:

- A. A description of the type of improvement proposed;
- B. The anticipated maximum costs of the improvement or the unit cost;
- C. The legal descriptions of the lands and lots to be included in the improvement district, and the street addresses of those lands and lots; and
- D. The names of the apparent owners of such lands or lots. (Ord. 266-73)

#### **12.12.050 Public hearing – notice required.**

A. Notice of the public hearing shall be given by virtue of publication of the proposed ordinance as required by the City Charter. In addition, the City Clerk shall mail a notice, at least seven (7) days before the public hearing, to each person named in the proposed ordinance to the property address shown therein.

B. The notice shall be mailed by certified mail, shall set forth the time and place of the public hearing, the type of local improvement proposed and the anticipated maximum cost or unit cost, and shall contain a statement that a portion of the cost will be assessed against the addressee's property. The notice further shall invite the addressee to attend the public hearing, and shall inform him or her that failure to do so may prejudice his or her rights. The notice shall be published once in a newspaper of general circulation in the County, at least seven (7) days before the public hearing. (Ord. 266-73)

#### **12.12.060 Public hearing – procedures.**

At the public hearing, the City Council shall consider all petitions, evidence and arguments pertaining generally to whether the proposed improvement is necessary or advisable. The City Council shall thereupon reject the proposed ordinance or finally accept it. (Ord. 266-73)

#### **12.12.070 Public hearing – continuation permitted when.**

Any hearing provided for under this Chapter may be continued by the City Council for any good reason without any additional notice being given of the time and place to which the hearing is to be continued. (Ord. 266-73)

#### **12.12.080 Property included in districts.**

A. Local improvement districts created for constructing, widening and surfacing streets or alleys; constructing or reconstructing sidewalks, curbs and gutters and bike paths; and extending or constructing sanitation sewers and water lines may consist of the lots and lands abutting on the right of way to be so improved or in which such sewer or water line is to be installed; or any other reasonable method of assessment so long as such method has some correlation to a special benefit which accrues to the property to be assessed.

B. Improvement districts created for making other improvements shall consist of lands or lots comprising the area which the City Council determines will be specifically benefitted by such local improvements. (Ord. 951-95; Ord. 266-73)

#### **12.12.090 Construction of improvements.**

After final passage of the ordinance creating the improvement district, the City shall make such improvement, or authorize it to be done. Construction of the improvement, or other steps necessary to create it, shall commence within a reasonable time after such final passage. However, construction of sidewalks, curbs or gutters shall not be commenced for a period of thirty (30) days following final passage of the ordinance. During that time, any owner of lands or lots included in the improvement district may deliver to the City engineer a signed and dated statement expressing the landowner's intention to construct or have constructed that portion of the sidewalk, curb or gutter which will abut on his or her property. Upon filing such statement, the landowner shall have the right and duty to construct or have constructed, at his or her sole expense, that portion of the sidewalk, curb or gutter, provided that the construction shall be completed within a reasonable time and shall be completed in strict conformity to the specifications contained on file with the City. (Ord. 266-73)

#### **12.12.100 Surfacing and graveling work.**

In performing surfacing or graveling work on a street or alley improvement being made pursuant to this Chapter, the City Engineer may authorize the use of gravel or other paving materials owned by the

City without including the cost of such materials in computing the total cost of the local improvement. (Ord. 266-73)

#### **12.12.110 Completion of work – cost report – City Council action.**

Upon completion of the local improvement, the City Engineer shall prepare a report of the costs thereof, including the incidental expenses referred to in Section 12.12.130 below. The report shall also recommend the cost, if any, to be charged against revenues of the City, shall recommend the proposed allocation of the costs among the lands and lots in the improvement district and, if applicable, shall contain a recommendation as to the life expectancy for paving on streets, avenues and alleys, along with a summary of the data upon which such recommendation is made. Such report shall be presented to the City Council at a regular meeting, and the City Council shall thereafter pass on first reading an assessment ordinance. (Ord. 266-73)

#### **12.12.120 Costs – basis of assessment.**

The costs of those local improvements described in Subsection 12.12.080.A of this Chapter shall be assessed proportionately on the basis of right of way frontage or any other reasonable method of assessment, so long as such method has come correlation to a special benefit which accrues to the property to be assessed against the lots and lands included in the improvement district created for any such improvements, except that assessments for constructing or extending sewers and water lines shall be allocated equally to each lot or parcel of land in the local improvement district. (Ord. 951-95; Ord. 266-73)

#### **12.12.130 Costs – items and interest included.**

The cost of a local improvement which is to be assessed, or a portion of which is to be assessed, against lots and lands in a local improvement district, shall include not only the cost of labor and materials involved in making the improvement, but also shall include the expense of engineering, inspection, advertisement, abstracting, publishing, postage, collection and other incidental costs, and shall also include interest at the rate of six percent (6%) per year from the date of the City's payment for such construction until the assessment is established by the assessment ordinance. (Ord. 266-73)

#### **12.12.140 Costs – payment from tax revenues when.**

Nothing in this Section or Sections 12.12.120 or 12.12.130 above shall prevent the City Council from determining that a portion of the costs of any local improvement shall be paid from the general property tax revenues of the City, to the extent that a local improvement confers a general benefit upon the City at large, or a special benefit upon the property owned by the City. (Ord. 266-73)

#### **12.12.150 Bond issuance authorized when.**

For the purpose of paying all or such portion of the cost of any local improvements constructed under the provisions of this Chapter as may be assessed against property specially benefitted, local improvement district bonds of the City may be issued, subject to any and all limitations as contained in the City Charter. (Ord. 266-73)

#### **12.12.160 Assessment ordinance – contents.**

The assessment ordinance shall set forth a description of the improvement, the total cost thereof and a separate statement of the total incidental costs, a description of the lots and lands included in the

improvement district, the names of the apparent owners of such lands and lots, and the amount being assessed against each lot or parcel of land in the improvement district. The assessment ordinance also shall set forth when such assessments are due and payable, the rate of interest to be charged thereon and, if applicable, the life expectancy as determined by the City Council for the paving on any street, avenue or alley. (Ord. 266-73)

#### **12.12.170 Assessment ordinance – public hearing – notice.**

A. At the time of passing the assessment ordinance, on first reading, the City Council shall schedule a public hearing to take place no sooner than twenty-eight (28) days thereafter. Notice of the public hearing shall be given by virtue of publication of the proposed ordinance as required by the City Charter. In addition, the City Clerk shall mail a notice, at least seven (7) days before the public hearing, to each person named in the proposed ordinance to the property address shown therein.

B. The notice shall be mailed by certified mail to the property address stated in the proposed assessment ordinance. The notice further shall invite the addressee to attend the public hearing and shall inform him or her that failure to do so may prejudice his or her rights. (Ord. 115-01; Ord. 266-73)

#### **12.12.180 Assessment ordinance – public hearing – City Council action.**

At the public hearing, the City Council shall consider all complaints and objections as to the proposed assessment ordinance and shall make such adjustments as shall be necessary to carry out the purpose and requirements of this Chapter. Thereupon the assessment ordinance shall be passed on final reading or, if necessary to reflect the adjustments, a new assessment ordinance or resolution shall be introduced. In the latter event, no additional notice shall be required. Nothing herein shall prevent the City Council from finally passing the assessment ordinance initially proposed, and thereafter accomplishing the required adjustments by a supplemental assessment ordinance or resolution. (Ord. 266-73)

#### **12.12.190 Assessments – payment time.**

All assessments shall be due and payable within thirty (30) days after the effective date of the assessing ordinance, without demand; except that all assessments may be paid, at the election of the owner, in installments with interest as provided in this Chapter. In case of such election to pay in installments, the assessments shall be payable in two (2) or more equal installments or principal with interest in all cases on the unpaid principal payable annually or semiannually. The number of installments and the period of payment shall be determined by the City Council, and set forth in the assessing ordinance. The entire assessment, or the full balance thereof remaining after the payment of one (1) or more annual installments may, at the option of the property owner, be paid at any one (1) installment payment date. (Ord. 510 81; Ord. 266-73)

#### **12.12.200 Assessments – failure to pay – installments elected.**

Failure to pay the whole assessment within the period of thirty (30) days, as set forth in Section 12.12.190 above, shall be conclusively considered to be an election on the part of all persons interested, whether under disability or otherwise, to pay in installments. All persons so electing to pay in installments shall be conclusively considered to have consented to such improvements. Such election shall be conclusively considered to be a waiver of any right to question the power or jurisdiction of the municipality to construct the improvements, the quality of the work, the regularity or sufficiency of the proceedings, the validity or the correctness of the assessments, or the validity of the lien thereof. (Ord. 510 81; Ord. 266-73)

#### **12.12.210 Assessments – late payments.**

If any required assessment payment is not made when due, the treasurer immediately shall certify the full unpaid portion thereof, together with all accrued interest, and together with a ten percent (10%) collection charge to the County Treasurer for collection as provided by law. (Ord. 510 81; Ord. 266-73)

#### **12.12.220 Assessments – interest rate.**

All assessments shall bear interest at a rate to be determined by the City Council and set forth in the assessment ordinance. The rate shall be reflective of the then-prevailing interest rates on local or special improvement district bonds issued to finance comparable improvements. Interest, at the rate so established, shall be charged against the unpaid portion of each assessment from the thirteenth day following the effective date of the assessment ordinance to the time when the assessment is fully paid. (Ord. 510 81; Ord. 266-73)

#### **12.12.230 Assessments – perpetual – liens.**

All assessments made in substantial compliance with this Chapter shall constitute, from the effective date of the assessment ordinance, a perpetual lien in the amounts assessed against the real property described in the assessment ordinance, and shall have priority over all other liens except prior tax or assessment liens. The lien of any assessment finally fixed by a supplemental assessment ordinance or resolution, as provided in Section 12.12.180 of this Chapter, shall relate back to the effective date of the assessment ordinance so supplemented. (Ord. 266-73)

#### **12.12.240 Assessment proceeds – use restrictions.**

All assessments collected either directly by the City or through taxation by the county treasurer shall be used to pay the costs of the improvement to which the assessments are applicable, and to redeem or pay any warrants, bonds or other forms of indebtedness incurred by the City on account of such improvements. (Ord. 266-73)

#### **12.12.250 Assessments – recordkeeping – assessment roll.**

The treasurer shall record all final assessments in an assessment roll to be kept for that purpose, showing the names of landowners, the amounts assessed against such lots and lands, the dates of the assessments, the amounts paid thereon and other appropriate information. (Ord. 510 81; Ord. 266-73)

#### **12.12.260 Limitations on actions.**

A. No legal or equitable action shall be brought or maintained to enjoin or in any way challenge the creation of a local improvement district, or the collection of assessments thereunder, unless such action shall be brought within thirty (30) days from the final passage of the applicable assessment ordinance.

B. No legal or equitable action shall be brought to enjoin or in any way challenge the issuance of local improvement district bonds by the City Council, unless such action is brought within thirty (30) days following the final passage of the ordinance authorizing such bonds. (Ord. 266-73)

**12.12.270 Existing facilities – purchase by City – conditions.**

The City Council shall have the power and authority to purchase existing facilities, such as those that could have been constructed and financed as local improvements pursuant to Sections 12.12.010, 12.12.030, 12.12.070, 12.12.100, 12.12.260 and 12.12.280 of this Chapter, and to finance any such purchase by creating a local improvement district and including therein the property serviced by such existing facilities. (Ord. 266-73)

**12.12.280 Reconstruction or repair of improvements.**

The reconstruction of a local improvement previously constructed as a local improvement may be financed pursuant to the provisions of this Chapter in the same manner as initial construction. The repair of any such local improvement shall not be so financed. The City Engineer shall report to the City Council on the question of whether work proposed to be done is repair work, or is reconstruction work, giving the reasons for his or her determination. The final determination of the question shall rest with the City Council, and such determination shall take into account the life expectancy for paving on any street, avenue and alley as set forth in the assessment ordinance applicable to the local improvement in question. (Ord. 266-73)